

ARLINGTON

DOCKET FILE COPY ORIGINAL

July 5, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

RECEIVED
FBI
9/19/96

Re: Docket No. 96-83
Restrictions on Over-The-Air
Reception Devices, and
Docket No. 95-59, Preem-
ption of Local Zoning Regu-
lation of Satellite Earth
Stations.

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Dear Mr. Caton:


We have been kept apprised of the substance of the pending rules referenced above by several industry groups. Our residential lease agreements contain prohibitions, for good and valid business reasons, against externally-mounted receiving antennas.

We are unsure how the proposed rules might affect or impair our rights under the lease agreement and respectfully request an interpretation of which lease provisions might constitute nongovernmental restrictions or impairments within the meaning of the proposed rules, or how the rules might otherwise apply.

This information is very critical to help us carry out our mission of representing our building owners and serving our tenants. We appreciate your kind and prompt attention to this matter, and ask you to contact us should you have more specific questions.

Yours very truly,

ARLINGTON PROPERTIES, INC.
MANAGEMENT DIVISION


John B. Bagwell
President

JBB/km
cc: File

0512

STATE OF ALABAMA
COUNTY OF _____

RESIDENT IDENTIFICATION NO. _____

LEASE AGREEMENT

ROYAL HOMES, INC., AGENT FOR

(OWNER-LESSOR)

I. LEASE TERMS AND OTHER DATA:

Community _____

1. Effective Date of Lease _____ 2. Date of Occupancy _____

3. Name of Lessee(s) _____

4. Address and Unit No. of Premises _____

5. Description of Premises:

a. Unit Type _____ Number of Baths _____

b. No. of Bedrooms _____

c. Names of Occupants Allowed _____

d. Vehicles _____

6. Term of Lease: _____ months beginning 12:00 Noon on _____ and ending 12:00 Noon on _____
and from month to month thereafter.

7. Monthly Rental \$ _____ (Due on or before First day of each Month)

8. Utilities to be Paid by Lessor (if any) _____

9. Money received as follows:

a. Security deposit _____ \$ _____

b. Pet fee (nonrefundable) or deposit (refundable)—Circle one if applicable _____ \$ _____

c. Pro-rated rent (For period _____, 19____ through _____, 19____) \$ _____

d. First month's rental for period beginning _____, 19____ \$ _____

e. Other charges: specify _____

_____ \$ _____

TOTAL _____ \$ _____

10. Late payment charges (see paragraph 3, reverse side) will be as follows: _____

11. There will be a charge of \$ _____ for each returned check (see paragraph 3, reverse side).

II. EXECUTION OF LEASE:

THIS LEASE AGREEMENT SPECIFICALLY INCLUDES ALL THE PROVISIONS STATED ABOVE AND THOSE SET FORTH ON THE REVERSE SIDE HEREOF.

IN WITNESS WHEREOF, this Agreement is duly executed by the Lessee(s) and by the Lessor, the day and year first above written.

NOTE: READ REVERSE SIDE BEFORE SIGNING LEASE. UPON EXECUTION LESSEE ACKNOWLEDGES THAT HE HAS READ AND AGREES TO THE PROVISIONS SET FORTH ABOVE AND ON THE REVERSE SIDE HEREOF.

LESSEE(S): _____

4. UTILITIES. We shall pay only for those utilities shown in Item 8 on the reverse side hereof. You shall pay for all other utilities on the Premises.

5. COMMON AREA FACILITIES. The swimming pool and all other recreational and common area facilities of this Apartment Community, when open and operating, and subject to the applicable rules and regulations posted by Us, may be used by You and the other occupants named in Item 5(c) on the reverse side, if any, without charge. Parking at the Apartment Community is normally provided only for Your passenger cars listed in Item 5(d) on the reverse side and no trucks, tractors, boats, campers, trailers or other vehicles will be permitted to park at the Apartment Community without permission in writing from Us. Parking is not assigned or reserved. We have the right to control the method and manner of all parking at the Apartment Community and also have the right to tow away and store at Your expense any vehicle parked or abandoned by You, your family, or guest, which becomes a nuisance to the Apartment Community, such as wrecked or disabled vehicles or vehicles not currently registered or licensed under applicable law. Any coin-operated laundry facilities provided for the Apartment Community, when open and operating, will be available for Your use subject to Our rules and regulations.

6. USE OF PREMISES. You shall use the Premises only as a private residential dwelling and only those persons who have signed this Lease and those persons named as occupants in Item 5(c) on the reverse side may occupy the Premises or use any other facilities of the Apartment Community without our prior written consent. If there is to be any change in the named occupants for the Premises, this must also be approved in writing by Us. Any person or persons not named as an occupant in Item 5(c) on the reverse side but who remains in or around the premises on a regular basis shall be considered as occupying the premises and if such person has not been approved by Us his occupancy shall constitute a default under the terms of this lease. You shall not permit the Premises to be used in any unlawful manner or in any manner that may in Our exclusive judgement be disturbing to another resident of the Apartment Community or for any purposes which in Our judgment may be unsavory conduct or injure the reputation, safety, or welfare of this Apartment Community. You, your children, and your guests shall observe and comply with the rules and regulations now existing or which may be established from time to time by Us for the operation and control of the Premises and the overall Apartment Community.

7. ENTRY FOR INSPECTION. We reserve the right to enter the Premises at reasonable times for the purposes of (a) inspecting and making repairs, alterations, or improvements to the Premises, or any adjoining contiguous apartment units, as We consider necessary or desirable, but We shall have no duty to make any such repairs, alterations, or improvements except as provided in paragraph 9, below, and, (b) exhibiting, during at least 30 days of the rental term, the Premises to persons who may wish to rent it.

8. ASSIGNMENT AND SUBLETTING. You shall not assign this Lease or sublet any or all of the Premises without Our written consent. We have the right to assign this lease should the Apartment Community be sold, transferred to another owner. In the event the Apartment Community is sold or transferred then We shall be released from the obligations of this Lease and your remedies for any breach of this lease shall be against the person, firm, or corporation succeeding to our rights in the Apartment Community.

9. REPAIRS, CARE OF PREMISES, ALTERATIONS. At your expense, You shall keep and maintain the premises in good, clean and safe condition and repair, including the replacement of any broken glass in the premises and replacement of electric light bulbs from time to time. You agree to be responsible for any negligent acts by You, your family, or guests which damage Our property. You agree to maintain any smoke or detection systems and any fire extinguishing apparatus furnished with the premises. If You do not maintain the Premises in such condition, we shall have the right to enter and do so on Your behalf and at Your expense, and You shall promptly reimburse us for such expense. We shall only make such repairs, alterations and improvements to the building shell, plumbing, electrical, heating and air conditioning systems We deem necessary for the preservation of the Premises or the building. In making any such repairs, We shall have no possibility for any inconvenience or annoyance to You, and the monthly rentals payable to Us under this lease shall not be reduced because of any alleged failure by Us to make any repairs for any reason whatsoever. Without Our prior written consent You shall not change any locks or paint, paper, mark or otherwise deface or the walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork, or any other parts of the premises, inside or outside. You may not erect or install on the exterior of any building in the Apartment Community any wire or antenna for the purpose of receiving or transmitting any signal in the electromagnetic spectrum. Any alterations or improvements which are made by You, including any fixtures, carpeting, shrubs, or other plants, shall become a part of the Premises and the Apartment Community unless otherwise notified by Us in writing. Upon termination of this Lease You shall thoroughly clean the Premises and restore it to original condition of repair, safety and appearance as it was on the date of this Lease, ordinary wear and only accepted, or, if You fail to do so, You will promptly reimburse Us for such expense. You should also in all keys to the premises upon termination.

10. DAMAGE AND LOSS. You shall at all times exercise due care in the use of the Premises. You are in occupancy of the Premises and accepting the Premises "as is" and "where is." You agree that We shall be liable to You, your family, your guests, or any other person for any loss, injury, or damage to person or property arising out of the failure of any appliance, fixture, the roof, any plumbing, heating, air conditioning, gas, electric, gas, water, or sewerage systems in or about the Premises, or caused by any casualty or catastrophe including without limitation, storm, flood, fire, criminal acts, termites, or vermin, or caused from defects, or from any other cause whatsoever, whether or not due to negligent acts or omissions by You, family and guests or by any third parties, including without limitation other occupants of this Apartment Community and You assume all risk of and agree to indemnify Us from any such loss, injury, or damage, or the use of the parking spaces, storerooms, laundry facilities, swimming pool, recreational facilities, community buildings, and all other common areas in this Apartment Community shall be at Your own risk and shall not be liable to You, your family, your guests, or any other person for any loss, injury, or damage to person or property arising out of the use of the foregoing, from any cause whatsoever, and You assume all risk of and agree to indemnify Us from any such loss, injury, or damage. You agree that the foregoing stipulations of paragraph 10 have been bargained for, and had they been omitted, the monthly rental as shown in Item 7 on the reverse side would be \$25.00 greater than that shown. You agree to carry insurance covering all property located in the Premises.

11. NOTICE OF TERMINATION; RENEWALS; TRANSFER. After the initial term of this Lease the rental shall automatically be renewed for successive one month periods at the same monthly rental and on the terms set forth in this Lease, unless on or before thirty (30) days prior to the last day of the original rental term or of any renewal rental period You or We give the other party written notice of termination as of the last day of such rental period. If, on or before thirty (30) days prior to the last day of any such rental period, We give written notice that any renewal shall be at a stated monthly rental different from the previous monthly rental, renewal shall be at such new stated monthly rental, unless within ten (10) days after Your receipt of such notice You give Us written notice of Your intent to terminate this Lease. This Lease may be terminated by You at any time after the first 120 days of the term if You are transferred by Your employer outside of a fifty (50) mile radius from the Apartment Community provided You perform each of the following: (a) give Us written notice at least thirty (30) days prior to the effective date of such termination, (b) give Us a certified copy of military transfer or a statement in the form of an affidavit sworn to before a notary public from your employer evidencing transfer, (c) pay all sums due Us up through the effective date of the termination, (d) leave the Premises in good condition with no damage, ordinary wear and tear alone excepted, and (e) otherwise comply with all terms of this Lease. If You elect to terminate under this provision during the original term of this Lease, We reserve the right to retain your security deposit as additional consideration for being released from this Agreement.

12. EARLY TERMINATION; LIQUIDATED DAMAGES. If for any reason other than those set forth in paragraph 11 above, You desire to terminate this lease at any time after the first 120 days of the term but prior to the end of said term, then You may do so by way of an accord and satisfaction with Us on the following terms: (a) You shall give Us 30 days written notice prior to the effective date of such early termination, (b) You shall pay Us the amount due through the date of termination, (c) You shall pay Us an amount equal to one and one-half month's liquidated damages prior to the date of termination, (d) You shall leave the Premises in good condition with no damage, ordinary wear and tear alone excepted, and (e) You will otherwise comply with all applicable terms and conditions of this Lease. If You perform as stated above, We will allow You to terminate this Lease prior to the end of the term pursuant to your notice and You shall be relieved of all further obligations hereunder. If, however, You do not perform each and every one of the above conditions, We shall be entitled to pursue all remedies provided for by this Lease or at law.

13. LATE POSSESSION. We shall exercise our best efforts to give you possession of the Premises at the commencement of the term of this Lease, but We shall not be liable to You or any other person for any failure to do so. Such failure shall not affect the validity of this Lease and Your obligation to pay rent. If, however, We fail to deliver You possession of the Premises at the commencement of this Lease, the monthly rental shall be abated pro rata on a daily basis and shall not be due until possession is given or made available. Should Lessor fail to deliver possession of the Premises within 15 days after

the commencement of the term of this Lease, however, such resulting result in a gain, the gain will accrue to Us and not You. You also agree to pay all costs of collection and enforcement of this lease, including a reasonable attorney's fee when Your account is forwarded to an attorney for purposes of enforcing any provisions of this lease, collecting any sums due under this lease, or for filing an unlawful detainer action or any other action to recover possession of the premises.

14. OUR RIGHTS UPON TERMINATION. Upon termination of this Lease by lapse of time or otherwise, or upon Our exercise of any power to re-enter and repossess the Premises described in Paragraph 14 above, You shall at once surrender possession of the Premises, remove such of Your property therefrom as We may specify in writing and deliver to Us all keys to the Premises. In any such event, if You should fail at once to surrender the Premises and remove the specified property therefrom, We may immediately re-enter and take control of the Premises and, at Our option, remove and/or store such property for Your account and at Your expense without any liability to You for loss or damage thereto. Except as may be allowed by Us in writing, You shall not remove any of Your property from the Premises at any time when any monthly rentals or other amounts due under this Lease are owed to Us or at any time while You are in default hereunder, and You hereby waive any and all rights to claim personal property as exempt from levy and sale, and grant Us a landlord's interest in all Your property located in and about the Premises at any time during the rental period, whether now owned or hereafter acquired, which landlord's interest shall secure Your payments to Us of all monthly rentals and other amounts due Us under this Lease at any time during or after the rental period and further secure Your performance and observance of all other terms of this Lease. If any of Your property remains on the Premises for ten (10) days after You have vacated the Premises or if We have removed and stored any such property in the exercise of any of Our rights and remedies under this Lease, then if You have not claimed and taken delivery of such property and paid Us all amounts due under this Lease including costs of removal and storage, We shall have the right to sell all or any part of such property at a public or private sale after giving You ten (10) days written notice at Your last known address or any forwarding address left by You with Us. We may apply the proceeds of such sale as follows: first, to the payment of all costs and expenses of removing the property from the Premises, storing the property and conducting the sale, second, to the payment of all monthly rentals and other amounts due Us; and, third, to You upon Your written demand, without interest. The landlord's interest set forth in this paragraph is for Our benefit and is supplemental to any lien provided by applicable statutes or common law.

15. SECURITY DEPOSIT. To secure Your performance of all of the terms of this Lease, You have deposited the sum as set forth in Item 9(a) on the reverse side hereof, which amount is herein called the "Deposit." The Deposit shall remain with Us for the full and faithful performance by You of each and every term of this Lease and You agree that at our option, the Deposit may be placed in an interest-bearing trust account with any interest accruing to Us, or, the Deposit may be transferred directly to the Owner. You will be entitled to the return of the Deposit, without interest, upon full compliance with the terms of this Lease and after We have had the opportunity to inspect the Premises; Lessor to make said inspection within five days of Lessee vacating the Premises. Until then, We shall have no obligation to apply the Deposit to any unpaid amounts due Us from You, but We may do so at Our option, and Our right to re-enter and repossess the Premises under paragraph 14 above shall in no way be affected by the fact that We may be holding the Deposit. If You have defaulted under the terms of this Lease, We have the right to retain the deposit as additional damages. Upon the sale or conveyance of the Apartment Community, We may transfer or assign Your Deposit to the new owner and upon transfer, all of Our liability and that of Our agents for such Deposit shall terminate.

16. PETS. Unless permitted by a separate Pet Agreement signed by You and Us and unless a pet fee in the amount shown in Item 9(b) on the reverse side is paid by You, You will not be allowed to keep any pets in or about the Premises, and Your acquisition of a pet at any time during the term of this Lease shall constitute a default under this Lease.

17. SUBORDINATION. You agree that Your interest under this Lease in the Premises is and shall remain subject and subordinate to the lien of each and every present and future mortgage, deed of trust, or other security instrument or underlying senior lease applicable to the Premises and the Apartment Community, and any extensions or renewals thereof and to all advances made or to be made thereunder. This subordination provision shall be self-operative, and no further instrument shall be required by any third party, but if We so request, You agree to execute and deliver such further instrument as may evidence this subordination to any third party. Your failure to execute such an instrument of subordination will be deemed a default under this Lease. In the event this Lease were to be voided as a result of a foreclosure of any such mortgage, deed of trust, or other security instrument or as a result of the termination of any underlying senior lease, We shall not be liable for any damages or losses caused to You. If by reason of a foreclosure of such mortgage, deed of trust or other security instrument or as a result of the termination of any underlying senior lease, there is a new owner of the Apartment Community during the term of this Lease, then You agree to attorn to such new owner as Your Landlord and continue to perform Your obligations under this Lease for such new owner as if he had been named the original Lessor hereunder. If the Apartment Community is financed by bonds issued by the Alabama Housing Finance Authority (the "Authority"), You agree that We have the right to terminate this Lease if directed to do so by the Authority, and You agree to take such action as may be directed by Us to cure any default in the loan documents caused by a failure to comply with the rules and regulations or regulatory agreements of the Authority. If You have executed a Tenant Income Certificate in conjunction with this Lease You: (a) agree to certify the accuracy of the statements made in the Tenant Income Certificate, (b) agree that the family income and other eligibility requirements shall be deemed substantial and material obligations or Your tenancy, (c) will comply with all requests for information with respect thereto from Us, the Authority, or any appropriate mortgage holder, and, (d) agree that Your failure to provide accurate information in the Tenant Income Certificate or Your refusal to comply with a request for information with respect thereto shall be deemed a breach of this Lease.

18. EMINENT DOMAIN. If the Premises or any part of the Premises shall be taken by eminent domain or pursuant to other governmental authority, this Lease shall at Our option, terminate. If We select to terminate due to such taking, You shall pay the rent pro rata up through the time of such termination and thereafter You shall have no claim against any award for the taking.

19. STATUS OF AGENT. You understand and agree that the Agent listed on the reverse side of this form acts only as Agent for the Lessor, who is the Owner of the Apartment Community. Therefore, responsibility for all obligations of the Lessor hereunder rests entirely with the Owner. The Agent may exercise and shall have the rights and powers of the Owner-Lessor but the Agent's duties, if any, are solely limited to those duties owed to the Owner-Lessor. The Agent has no duties to You with respect to the security deposit hereunder. The Agent shall, as Agent for the Owner, benefit from the covenants, waivers, releases, and indemnifications contained in this Lease to the same extent as the Owner.

20. RULES AND REGULATIONS. You acknowledge that You have read the rules and regulations of the Apartment Community furnished with this Lease and made a part hereof. You agree to abide by and conform to these rules and regulations, and to any other rules and regulations that We may promulgate from time to time and furnish to You which reasonably relate to the operation of the Premises and the Apartment Community. We shall not be liable to You for any damage or injury resulting from any violation of these rules and regulations.

21. MISCELLANEOUS. Except as otherwise provided in this lease, the agreements herein shall be enforceable by and against You and Your respective personal representatives, successors, and assigns. This document, with both its front and back sides, contains the entire agreement between the parties and all prior and contemporaneous discussions and negotiations or understandings are merged herein and no statement, representation, inducement, promise or conduct whatsoever, oral or written, expressed or implied, not contained herein shall be binding on either party. No subsequent amendment to this Lease shall be binding unless in writing and signed by the parties hereto. No waiver of any breach of any term of this Lease shall be construed as a waiver of that term or condition of any subsequent breach thereof, and Our acceptance of any monthly rental after the due date shall not constitute a waiver of Our right to receive any future monthly rental on the due date. This Lease shall if possible be construed consistently with all laws and public policies, and if any court of competent jurisdiction determines that it is impossible to so construe any provision of this Lease and consequently holds that provision to be invalid, then such holding shall in no way whatsoever affect the validity of any other provisions of this Lease. If this Lease is executed by more than one party, all such persons shall be jointly and severally liable for the payment of the agreed rental and for the performance of all other terms and obligations required to be kept by the Lessee hereunder. Any notice provided for herein may be delivered, if by You to Us, by mailing the same by Certified Mail to the office of the Lessor's Agent, or by hand delivery in person, but such delivery must be acknowledged in writing by Lessor or Lessor's Agent at time of such delivery; if by Us to You, by serving You in person or by leaving said notice at or on the leased Premises or by mailing said notice to You at the leased Premises by ordinary or Certified Mail; and You hereby agree that any notice addressed to You at the address shown in Item 4 on the reverse side shall be legal notice the same as if personally served. When the context permits or requires, a pronoun in any gender (masculine, feminine, or neuter) shall include the remaining genders, and the singular the plural and the plural the singular. Each party acknowledges that he has read this Lease prior to signing and agrees to all terms contained herein. The remedies contained in this Lease shall be cumulative and shall not in any way abridge, modify, or preclude any other rights or remedies to which We are entitled at law or in equity.